IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 845 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT AGRICULTURAL UNIVERSITY

Versus

J K BUILDERS

Appearance:

1. Civil Revision Application No. 845 of 2001

MR MG NAGARKAR for Petitioner No. 1

MR RUTVIJ M BHATT for Respondent No. 1

CORAM : MR.JUSTICE SHARAD D.DAVE

Date of decision: 30/01/2002

C.A.V.JUDGEMENT

DATE OF PRONOUNCEMENT : 26/02/2002

1. The tender was invited by the applicant for the

work of construction of layer house at Gujarat Agriculture University, Anand and respondent herein submitted his tender which was accepted and contract agreement was executed between the parties. According to the respondent, the dispute arose between them and therefore, respondent filed Spl. Civil Suit No. 6 of 1989 under Sec. 20 of the Arbitration Act, 1940, before the Civil Judge (S.D.), at Anand, interalia contending that there is valid arbitration clause in the agreement and therefore, Honourable Court may appoint an arbitrator to resolve the dispute. The said suit was transferred to the Arbitration Tribunal under Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992 (hereinafter referred to as the Act), before whom the University appeared and filed its preliminary objection to the claim petition. Without deciding the preliminary objections at exh. 10, the said Tribunal proceeded with the main claim petition and at the time of deciding the main petition, rejected the preliminary objections of the applicant-University. The Tribunal has also not decided the counter claim of the applicant University and finally passed an award in favour of the present respondent and against the present applicant for Rs.23,792/- with interest on 29.1.1999. Aggrieved by this order, this Revision Application is filed under Sec. 12 of the said Act.

2. According to Mr. M.G. Nagarkar, LA for the petitioner, the Tribunal ought to have seen that there is no valid arbitration agreement between the parties and therefore the suit filed before the Civil Court, was not tenable at law and therefore there was no question of transferring the matter to the Tribunal. That the Tribunal erred in holding that the petitioner University is a body corporate controlled by the State Government and so it is a public under taking and the Tribunal has jurisdiction to decide the dispute of contract arose between the parties. In support of his submission Mr. Nagarkar relied on the decision in the case of The State of U.P. vs. Tipperchand reported in AIR 1980 SC page 1522 and CRA No. 688 of 1992 decided on 14.8.1992, by this Court (Coram: S.D. Shah, J) and submitted that, clause 35 of tender papers in this case is similar to Clause 22 of the agreement before the Supreme Court and the Supreme Court has held that, clause 22 does not amount to an arbitration agreement and therefore, the order passed by the Tribunal in this suit should be set aside.

3. Against the aforesaid submission Mr. Rutvij Bhatt, LA for the respondent relied on Sec. 21 of the

Act, and submitted that, the decision of the Tribunal is legal and valid and therefore, this Court need not interfere with the same. He also relied on the same authority as relied on by the LA for the petitioner.

4. Heard the LAs and perused the authority and papers. The case of the Tipperchand (Supra) is binding to me but, in my opinion, it will not apply to the facts of the present case as the case before me is decided after the Gujarat Public Works Contract Disputes Arbitration Tribunal Act came into force on 23.3.92. In the same way, the Civil Revision Application No. 688 of 1992, though decided after the Act came into existance, was decided by the Trial Court and not by the Tribunal.

Sec. 21 of the Act, says as under:-

> "The provisions of the Arbitration Act, shall in so far as they are inconsistent with the provisions of this Act, ceased to apply to any dispute arising from a works contract, and all arbitration proceedings in relation to such dispute before an Arbitrator, empire, Court or authority shall stand transferred to the Tribunal."

5. Having regard to the aforesaid discussion, I do not find any necessity to interfere with the order of the Tribunal and therefore, this Civil Revision Application deserves to be dismissed. Accordingly, this Civil Revision Application is dismissed. Rule discharged. Interim relief granted earlier shall stand vacated.

[SHARAD D. DAVE, J]

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At the request of Mr.M.G.Nagarkar, L.A. for the petitioner, this order is stayed for 8 weeks as the petitioner's advocate wants to approach the Higher Forum.

26/02/2002 (SHARAD D DAVE, J)